

ASSEMBLY BILL

No. 1101

**Introduced by Assembly Member Steinberg
(Principal coauthor: Assembly Member Pavley)**

February 20, 2003

An act to amend Section 6068 of the Business and Professions Code, relating to attorneys.

LEGISLATIVE COUNSEL'S DIGEST

AB 1101, as introduced, Steinberg. Attorney-client confidences.

Existing law, the State Bar Act, provides for the licensing and regulation of attorneys by the State Bar of California. Existing law imposes various duties on an attorney, including the duty to maintain the confidences and preserve the secrets of his or her client at every peril to himself or herself.

This bill would create an exception to this duty when the attorney reasonably believes that disclosure of a confidence or secret is necessary to prevent the commission of a criminal act likely to result in death or substantial bodily harm to an individual.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6068 of the Business and Professions
- 2 Code is amended to read:
- 3 6068. It is the duty of an attorney to do all of the following:

1 (a) To support the Constitution and laws of the United States
2 and of this state.

3 (b) To maintain the respect due to the courts of justice and
4 judicial officers.

5 (c) To counsel or maintain those actions, proceedings, or
6 defenses only as appear to him or her legal or just, except the
7 defense of a person charged with a public offense.

8 (d) To employ, for the purpose of maintaining the causes
9 confided to him or her those means only as are consistent with
10 truth, and never to seek to mislead the judge or any judicial officer
11 by an artifice or false statement of fact or law.

12 (e) (1) To maintain inviolate the confidence, and at every peril
13 to himself or herself to preserve the secrets, of his or her client.

14 (2) *Paragraph (1) does not apply to a confidence or secret*
15 *when an attorney reasonably believes that disclosure of the*
16 *confidence or secret is necessary to prevent the commission of a*
17 *criminal act likely to result in the death of, or substantial bodily*
18 *harm to, an individual.*

19 (f) To advance no fact prejudicial to the honor or reputation of
20 a party or witness, unless required by the justice of the cause with
21 which he or she is charged.

22 (g) Not to encourage either the commencement or the
23 continuance of an action or proceeding from any corrupt motive
24 of passion or interest.

25 (h) Never to reject, for any consideration personal to himself or
26 herself, the cause of the defenseless or the oppressed.

27 (i) To cooperate and participate in any disciplinary
28 investigation or other regulatory or disciplinary proceeding
29 pending against himself or herself. However, this subdivision shall
30 not be construed to deprive an attorney of any privilege guaranteed
31 by the Fifth Amendment to the Constitution of the United States,
32 or any other constitutional or statutory privileges. This subdivision
33 shall not be construed to require an attorney to cooperate with a
34 request that requires him or her to waive any constitutional or
35 statutory privilege or to comply with a request for information or
36 other matters within an unreasonable period of time in light of the
37 time constraints of the attorney's practice. Any exercise by an
38 attorney of any constitutional or statutory privilege shall not be
39 used against the attorney in a regulatory or disciplinary proceeding
40 against him or her.

1 (j) To comply with the requirements of Section 6002.1.

2 (k) To comply with all conditions attached to any disciplinary
3 probation, including a probation imposed with the concurrence of
4 the attorney.

5 (l) To keep all agreements made in lieu of disciplinary
6 prosecution with the agency charged with attorney discipline.

7 (m) To respond promptly to reasonable status inquiries of
8 clients and to keep clients reasonably informed of significant
9 developments in matters with regard to which the attorney has
10 agreed to provide legal services.

11 (n) To provide copies to the client of certain documents under
12 time limits and as prescribed in a rule of professional conduct
13 which the board shall adopt.

14 (o) To report to the agency charged with attorney discipline, in
15 writing, within 30 days of the time the attorney has knowledge of
16 any of the following:

17 (1) The filing of three or more lawsuits in a 12-month period
18 against the attorney for malpractice or other wrongful conduct
19 committed in a professional capacity.

20 (2) The entry of judgment against the attorney in ~~any~~ a civil
21 action for fraud, misrepresentation, breach of fiduciary duty, or
22 gross negligence committed in a professional capacity.

23 (3) The imposition of ~~any~~ judicial sanctions against the
24 attorney, except for sanctions for failure to make discovery or
25 monetary sanctions of less than one thousand dollars (\$1,000).

26 (4) The bringing of an indictment or information charging a
27 felony against the attorney.

28 (5) The conviction of the attorney, including any verdict of
29 guilty, or plea of guilty or no contest, of ~~any~~ a felony, or ~~any~~ a
30 misdemeanor committed in the course of the practice of law, or in
31 ~~any~~ a manner in which a client of the attorney was the victim, or
32 a necessary element of which, as determined by the statutory or
33 common law definition of the misdemeanor, involves improper
34 conduct of an attorney, including dishonesty or other moral
35 turpitude, or an attempt or a conspiracy or solicitation of another
36 to commit a felony or ~~any~~ a misdemeanor of that type.

37 (6) The imposition of discipline against the attorney by ~~any~~ a
38 professional or occupational disciplinary agency or licensing
39 board, whether in California or elsewhere.

1 (7) Reversal of judgment in a proceeding based in whole or in
2 part upon misconduct, grossly incompetent representation, or
3 willful misrepresentation by an attorney.

4 (8) As used in this subdivision, “against the attorney” includes
5 claims and proceedings against any firm of attorneys for the
6 practice of law in which the attorney was a partner at the time of
7 the conduct complained of and any law corporation in which the
8 attorney was a shareholder at the time of the conduct complained
9 of unless the matter has to the attorney’s knowledge already been
10 reported by the law firm or corporation.

11 (9) The State Bar may develop a prescribed form for the
12 making of reports required by this section, usage of which it may
13 require by rule or regulation.

14 (10) This subdivision is only intended to provide that the
15 failure to report as required herein may serve as a basis of
16 discipline.

